(1120)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.2124 OF 2004

PETITIONER		Ramnath Vishwakarma, aged about 60 years, S/o. Sahdev Vishwakarma, Shock up Mechanic near Pavan Talkies, Railway Gossing, Korba, R/o. Durpa Road, Korba, District Korba (C.G.)
	Vs.	
RESPONDENTS	1.	State of Chhattisgarh, through Secretary Home, D.K.S. Bhawan, Raipur (C.G.)
	2.	Superintendent of Police, Janjgir, Distt. Janjgir-Champa(C.G.)
	3.	Superintendent of Police, Korba, Dist. Korba (C.G.)
	4.	Station House Officer, Police Station Korba, District Korba (C.G.)
	5.	Station House Officer, Police Station Akaltara, Distt. Janjgir-Champa.

Present : Shri Kishore Bhaduri, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy.G.A. for the State.

(ORAL ORDER)
(Passed on 27th January, 2006).

The petitioner is the father of deceased Kailash Vishwakarma by name. The petition is filed for a direction that the investigation into the death of Kailash Vishwakarma in suspicious circumstances on 17.02.2004 be entrusted to C.B.I. The grievance of the petitioner is that the local police are not investigating into the death of Kailash Vishwakarma in the way expected of them and with any seriousness. In other words, according to the petitioner, there is a discernable laxity on the part of the local police in

investigation into the crime. According to the petitioner, Kailash Vishwakarma was murdered by unknown persons. On service of notice, the respondents have filed their return. In the return, respondents have in great detail referred to the steps already taken by the investigating police on lodging of the complaint around 9.20 a.m. on 18.02.2004 by Rakesh Vishwakarma who is said to be elder brother of Kailash Vishwakarma. In the return, it is stated thus :

> "2. It is submitted that the brief factual aspect of the entire episode is that around 9.20 a.m. on 18.2.2004 one Rakesh Vishwakarma lodged a report that his elder brother one Kailash Vishwakarma had not returned home after the previous night and that despite searching up till Sarvamangala Temple the said Kailash Vishwakarma could not be traced. In the report Rakesh Vishwakarma, the son of the present petitioner, also stated that blue coloured "Victor" Motor cycle resembling one owned by his brother Kailash Vishwakarma was lying at the canal near the Sarvamangala Temple. Upon lodging of the said report the concerned Police Station immediately swung into action and after registering the missing person case NO.2/04 diligent searching was started. It would also be worthwhile to mention that the place where the Motor cycle accident took place, came within the P.S. Kusumunda, District-Korba. Thereafter the elaborate search operation was mounted in which relatives etc. of the said Kailash Vishwakarma were also actively participated. Constant search was made along the Hasdeo RBC canal and after the great deal of searching finally in the afternoon on18.02.2004 the dead body of Kailash Vishwakarma was finally found at village-Dongri, P.S. Akaltara, O.P. Baloda, District Janjgir-Champa, 30 Kms away from the place where his Motor cycle lying near the canal. Upon the finding of the missing person the missing person case was closed.

3. It is submitted that thereafter upon finding of the dead body by one Onkar Singh Thaur, who had seen the body floated along the canal made an intimation at O.P. Baloda, P.S. Akaltara, District – Janjgir-Champa, upon which the Marg was registered and after taking inquest the dead body was sent for post mortem. A copy of the inquest report alongwith the Post mortem report are being annexed herewith as **Annexure R-1/1** for perusal of the Hon'ble Court.

4. It is submitted that in the Post mortem report, since the case of death was not definite and, therefore, according to the opinion of the concerned Doctor, the Visera after being preserved was sent for FSL for chemical analysis and in the chemical analysis too no poisonous chemical was found. In order to substantiate the above a copy of the FSL report is being annexed herewith as **Annexure R-1/2** for perusal.

5. It is also submitted that in order to arrive at the conclusion that whether the death was caused by drowning the left Femur of the deceased was sent for Histopathological analysis in which the bone was found negative which was found in diatom test while water was found positive in the said diatom test, which goes to show that the deceased already dead before drowning. Copy of the diatom test is being annexed herewith as **Annexure R-1/3** for perusal of this Hon'ble Court. Thereafter the detail enquiry into the death of the aforesaid Kailash Vishwakarma is still under way.

6. It is also submitted and would be pertinent worthwhile to mention here that the post mortem report, diatom test report and Visera were sent for further expert opinion to the Pt. J.N.M. Medical College, Raipur, in which final opinion given was that there was a history of alcohol consumption, injuries are there on the head and that since the deceased victim fell into water alongwith the motor cycle and died, therefore, the circumstantial evidence should be given greater credence to decide the cause and nature of death.

Copy of the expert opinion is being annexed herewith as Annexure R-1/4 for perusal of this Hon'ble Court.

7. It is submitted that since the dead body was found within the area falling under the Police of District-Janjgir Champa, therefore, the enquiry in detail is being conducted by the Janjgir Police and presently the police officer of the rank of Inspector is carrying on enquiry into the entire matter. The detail statements of various persons who were present in the Hotel in the night of 17.2.2004, where the deceased alongwith one Anis Memon consumed liquor and ate non-vegetarian dishes have been taken. The statements go to show that the deceased was having sat with Anis Memon departed from the said Hotel alone. Further more, it is submitted that beside the said Anis Memon the statements of Onkar Singh, Heman Patel, Nutan Singh Thakur, Bisahuram, Brijesh Kumar Tripathy, Jayesh Kumar Fedric, Amit Kumar, Rakesh Vishwakarma, Prakash Chand Vishwakarma, Ravi Baradone, Mannu Kumar, Shabir Khan, Sukhsagar Das, Vijay Kumar Vishwakarma have been taken and the enquiry is being conducted diligently and to the best of abilities of the police and further more any leads etc. which might be helpful are being searched for. Therefore, there is no merit in the allegations that the police is not conducting enquiry as per the investigations."

The investigation is not yet complete. I am satisfied that the steps hitherto taken by the local police would go to show that there was no laxity on the part of the local police in investigation into the alleged crime and on the other hand, they have taken appropriate steps to unearth the alleged crime. It is quite often held and reiterated by the Courts that the C.B.I. which is a Central investigating agency should be sparingly used to investigate the crimes committed within the jurisdiction of a local Government, unless weighty and substantial grounds are made out to doubt the credibility and seriousness of the local investigating agencies. The petitioner has failed to

make out such a ground in the instant case. There is nothing on record, on the basis of which, I possibly could form an opinion that the local police at the behest of some persons in the political executive or bureaucracy and in order to hush-up the crime, are not taking appropriate steps in the matter of investigation into the alleged crime. It is not a fit case to grant relief as sought for in the writ petition. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

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